

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE**
3 **WESTERN DISTRICT OF OKLAHOMA**

4 CYNTHIA D. OLBERT,)

5 Plaintiff)

6 v.)

7 NCO FINANCIAL SYSTEMS, INC.,)

8 Defendant)

Case No.:

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

9
10
11 **COMPLAINT**

12
13 CYNTHIA D. OLBERT (“Plaintiff”), by and through her attorneys,
14 KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL
15 SYSTEMS, INC. (“Defendant”):

16 **INTRODUCTION**

17
18 1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices
19 Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”), which prohibits debt collectors from
20 engaging in abusive, deceptive, and unfair practices.

21 **JURISDICTION AND VENUE**

22
23 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),
24 which states that such actions may be brought and heard before “any appropriate
25 United States district court without regard to the amount in controversy,” and 28

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3 3. Defendant conducts business in the State of Oklahoma; therefore,
4 personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. §1391(b)(2).

6
7 **PARTIES**
8

9 5. Plaintiff is a natural person residing in Alva, Oklahoma 73717.

10 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C.
11 §1692a(3).

12 7. Defendant is a debt collection company with its principal place of
13 business located at 507 Prudential Road, Horsham, Pennsylvania 19044.

14 8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §
15 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

16 9. Defendant acted through its agents, employees, officers, members,
17 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
18 representatives, and insurers.

19
20 **FACTUAL ALLEGATIONS**
21

22 11. At all relevant times, Defendant was attempting to collect an alleged
23 consumer debt from Plaintiff.

24 12. The alleged debt, an Oklahoma College Assistance Program student
25

1 loan, arose out of transactions, which were primarily for personal, family, or
2 household purposes.

3 13. Beginning in April 2013, Defendant continuously and repeatedly
4 contacted Plaintiff on her cellular telephone seeking and demanding payment in
5 full for a consumer debt.
6

7 14. Defendant contacted Plaintiff, on average, two (2) to three (3) times a
8 day.
9

10 15. As a result, Plaintiff received more than ten (10) collection calls a
11 week.
12

13 16. In those instances where Plaintiff answered Defendant's calls,
14 Defendant tried to get Plaintiff to pay the alleged debt by threatening that they
15 would garnish her wages for nonpayment of the debt.
16

17 17. As of the date of this Complaint, Defendant has not filed suit for the
18 underlying debt, obtained a judgment on the underlying debt, or sought to garnish
19 Plaintiff's wages.

20 18. Upon information and belief, Defendant did not have any intention of
21 garnishing her wages.
22

23 19. At the time the threat was made, Defendant's statement was false,
24 deceptive and misleading, with intent to harass, abuse and annoy Plaintiff.

25 20. Further, in its attempts to collect the debt, Defendant contacted

1 Plaintiff's parents, deceptively claiming that they were looking for her and wanted
2 her address and contact information.

3 21. Upon information and belief, at the time Defendant contacted
4 Plaintiff's parents, it possessed valid contact information for her.
5

6 22. Upon information and belief, Defendant contacted Plaintiff's parents
7 knowing that they would tell Plaintiff that "NCO Financial Systems" had called
8 and was looking for her.
9

10 23. It was embarrassing to Plaintiff to have her parents called about this
11 alleged debt.

12 24. Lastly, on or around April 14, 2013, Defendant sent correspondence
13 to Plaintiff demanding payment of the alleged debt. See Exhibit A, Defendant's
14 April 14, 2013, letter.
15

16 25. The April 14, 2013, letter was Defendant's initial communication
17 with Plaintiff.
18

19 26. Because Defendant's April 14, 2013, letter was its initial
20 communication with Plaintiff, §1692g(a) of the FDCPA requires that Defendant's
21 correspondence contain the following language:
22

- 23 (1) the amount of the debt;
24 (2) the name of the creditor to whom the debt is owed;
25 (3) a statement that unless the consumer, within thirty
days after receipt of the notice, disputes the validity

1 of the debt, or any portion thereof, the debt will be
2 assumed to be valid by the debt collector;

3 (4) a statement that if the consumer notifies the debt
4 collector in writing within the thirty-day period
5 **that the debt, or any portion thereof, is disputed,**
6 the debt collector will obtain verification of the
7 debt or a copy of the judgment against the
8 consumer and a copy of such verification or
9 judgment will be mailed to the consumer by the
10 debt collector; and

11 (5) a statement that, upon the consumer's written
12 request within the thirty-day period, the debt
13 collector will provide the consumer with the name
14 and address of the original creditor, if different
15 from the current creditor. (emphasis added)

16 27. Despite this requirement, Defendant's April 14, 2013, correspondence
17 states the following:

18 Unless you notify this office within 30 days after
19 receiving this notice that you dispute the validity of the
20 debt or any portion thereof, this office will assume this
21 debt is valid. If you notify this office in writing within 30
22 days from receiving this notice, this office will obtain
23 verification of the debt or obtain a copy of a judgment
24 and mail you a copy of such judgment or verification. If
25 you request this office in writing within 30 days after
receiving this notice, this office will provide you with the
name and address of the original creditor, if different
from the current creditor.

26 28. Under the plain language of the FDCPA, a consumer must **dispute** the
27 debt in writing in order to trigger the protections of 15 U.S.C. §1692g(a)(4).

1 29. However, Defendant's notice fails to include the language notifying
2 Plaintiff that she must **dispute** the debt or any portion thereof, in order for
3 Defendant to be required to send verification.
4

5 30. The FDCPA clearly states that a written dispute, and not merely a
6 written request for verification, triggers the protections of the statute. See 15
7 U.S.C. §1692g(b).
8

9 31. Defendant's actions as described herein were taken with the intent to
10 deceive, abuse, harass, and annoy in connection with the collection of a debt.

11 **DEFENDANT VIOLATED**
12 **THE FAIR DEBT COLLECTION PRACTICES ACT**

13 **COUNT I**

14 24. Defendant's conduct, as detailed in the preceding paragraphs,
15 violated 15 U.S.C. §§1692d and 1692d(5).
16

17 a. Section 1692d of the FDCPA prohibits debt collectors from
18 engaging in any conduct the natural consequences of which is to
19 harass, oppress or abuse any person in connection with the
20 collection of a debt.
21

22 b. Section 1692d(5) of the FDCPA prohibits debt collectors from
23 causing a telephone to ring or engaging any person in telephone
24 conversation repeatedly or continuously with the intent to annoy,
25 abuse, or harass any person at the called number.

- 1 c. Defendant violated §§1692d and 1692d(5) of the FDCPA when it
2 called Plaintiff approximately two (2) to three (3) times a day,
3 with the intent to annoy, abuse and harass Plaintiff.
4

5 **COUNT II**

6 26. Defendant's conduct, detailed in the preceding paragraphs, violated 15
7 U.S.C. §§1692e and 1692e(5).
8

- 9 a. A debt collector violates §1692e of the FDPCA by using false,
10 deceptive, or misleading representations or means in connection
11 with the collection of any debt.
12
13 b. A debt collector violates §1692e(4) of the FDCPA by
14 representing or implicating that nonpayment of any debt will
15 result in the arrest or imprisonment of any person or the seizure,
16 garnishment, attachment, or sale of any property or wages of
17 any person unless such action is lawful and the debt collector or
18 creditor intends to take such action.
19
20 c. Here, Defendant violated §§1692e and 1692e(4) of the FDCPA
21 by threatening to garnish her wages, when it did not intend to
22 take such action and/or legally could not take the action.
23

24 **COUNT III**

25 27. Defendant's conduct, detailed in the preceding paragraphs, violated 15

1 U.S.C. §1692f.

- 2 a. A debt collector violates §1692f of the FDCPA by using unfair
3 or unconscionable means to collect or attempt to collect any
4 debt.
5
6 b. Here, Defendant violated §1692f of the FDCPA engaging in
7 other unfair and unconscionable debt collection practices,
8 including contacting Plaintiff's parents in its attempts to collect
9 a debt.
10

11 **COUNT IV**

12 27. Defendant's conduct, detailed in the preceding paragraphs, violated 15
13 U.S.C. §1692g(a)(4).
14

- 15 a. Section 1692g(a)(4) of the FDCPA requires a debt collector to
16 inform the consumer in its initial communication that if the
17 consumer notifies the debt collector in writing within the thirty-
18 day period **that the debt, or any portion thereof, is disputed,**
19 the debt collector will obtain verification of the debt or a copy
20 of the judgment against the consumer and a copy of such
21 verification or judgment will be mailed to the consumer by the
22 debt collector.
23
24 b. Here, Defendant violated §1692g(a)(4) of the FDCPA by
25

1 omitting in its initial collection letter to Plaintiff that she must
2 dispute the debt in writing to invoke her verification rights.

3 WHEREFORE, Plaintiff, CYNTHIA D. OLBERT, respectfully prays for a
4 judgment as follows:

- 6 a. All actual damages suffered pursuant to 15 U.S.C. §
7 1692k(a)(1);
- 8 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
9 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 10 c. All reasonable attorneys' fees, witness fees, court costs and
11 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
12 § 1693k(a)(3);
- 13 d. Any other relief deemed appropriate by this Honorable Court.

14 **DEMAND FOR JURY TRIAL**

15 PLEASE TAKE NOTICE that Plaintiff, CYNTHIA D. OLBERT, demands
16 a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 05/24/2013

KIMMEL & SILVERMAN, P.C.

By: /s/ Tara L. Patterson

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